

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on February 20, 2014

+ **W.P.(C) 660/2014**

DELHI INTERNATIONAL AIRPORT PVT. LTD.

..... Petitioner

Represented by: Mr. Dinesh Agnani, Sr. Advocate
with Mr. Alok Kumar, Mr.
Abhayveer Sharma, Mr. Amit
Kumar Dadhich, Mr. Amit
Agnihotri, Advocates

versus

THE GENERAL SECRETARY, CAMBATA AVIATION
KARAMCHARI UNION (CAKU) AND ANR.

..... Respondents

Represented by: Mr. N. A. Sebastian, Advocate for
R1

Mr. Ashok K. Srivastava,
Advocate for R2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (Oral)

1. In this writ petition, the challenge of the petitioner is to the two orders dated June 17, 2013 and December 20, 2013, whereby the Central Government Industrial Tribunal-II (Tribunal, in short) had impleaded the petitioner as a party in the Industrial Dispute and further rejected the application of the petitioner under Order 1 Rule 10 CPC for its deletion from the array of the parties.

2. The respondent No. 1 raised an Industrial Dispute which was

referred to the Industrial Dispute for adjudication on the following terms:

“Whether the action of management of Cambata Aviation Pvt. Ltd. in not paying Variable Dearness Allowance (VDA)/DA to their workmen w.e.f. 01/02/2010 onward in spite of Notification dated 09/03/2010, 18/03/2011 and 26/07/2011 respectively issued by Government of NCT, Labour Deptt Delhi is justified or not”. If not What relief the workmen are entitled to and from which date?”

3. The respondent No. 1 filed a claim petition in the month of November, 2012, praying for the following reliefs:

“I. Direct the management to pay all the VDA/DA increase from 01-02-2010 onwards with interest at @ 18% per annum.

II. Cost of Dispute and legal expense of Rs. 36000/- and any other relief which Hon’ble Tribunal may deem fit and proper in facts and circumstances of case”.

4. During the pendency of the Tribunal, an application was filed by the respondent No. 1 seeking impleadment of Delhi International Airport Private Limited (DIAL), wherein the following averments have been made in support of the impleadment:

“1. That the present Application being moved following the filing of Written Statement (WS) by the opposite party Management.

It is respectfully submitted that the case in hand be better adjudicated upon only by way of impleading the DIAL

(Delhi International Airport Pvt. Ltd.), DIAL has the exclusive right and authority to take the function of AAI (Airport Authority of India) who has entered into Operation, Management and Development Agreement (OMDA) on April 4, 2006 with AAI.

That opposite party has stated in its WS that Management is providing Ground Handling Services as per permission issued by Airport Authority of India (General Management), Ground Handling Service Regulations 2000.

It is submitted that AAI being the instrumentality of state within the meaning of Article 12 of the Constitution of India having regard to Ground Handling Regulations 2000 framed under the Act of Parliament namely Airport Authority India Act 1994 That After the signing of OMDA between AAI & DIAL the Management has to seek out permission/Licence to carry its business of Ground Handling Services from DIAL. Moreover DIAL is the Principal Employer of the claimants having Administrative, Financial and Supervisory control over the establishment on its entirety & empowered to remove Cambata Employees. It is DIAL who has awarded ten (10) years contract w.e.f. 27th MAY 2010 to Management vide letter Dated 28th May 2010 and has also signed a Contract Agreement on revenue sharing basis. A photo copy of said letters and few pages of agreement annexed as Annexure I.

Hence the notice and the appropriate direction by the Hon'ble Authority to DIAL is in the interest of expeditious resolution of the vital issues confronting the claimants in their day to day functioning in the setup. Unless and until the DIAL (Delhi International Airport Pvt. Ltd.) is arrayed in the present array of the parties the applicant claimant will suffer irreparable loss and untold volumes of prejudice”.

5. A reply to the said application was filed by the respondent No. 2 wherein the following stand has been taken:

“The dispute which has been referred to your goodself relates to the claim regarding non-payment of Variable Dearness Allowance (VDA)/Dearness Allowance (DA) at the enhanced rate to the workmen of Cambata Aviation Pvt. Ltd., New Delhi. The involvement of Delhi International Airport Pvt. Ltd. (DIAL), therefore, will not serve any purpose as admittedly, the role of DIAL is confined only to the question of granting permission to the Management for providing Ground Handling Services at the IGI Airport. DIAL is not the Principal Employer of the claimants/employees of Cambata Aviation Pvt. Ltd. and it has no administrative, financial and supervisory control over the Management of CAPL. It has no power to employ or to remove or to award punishment to the employees of Cambata Aviation Pvt. Ltd. It is also admitted by the claimants that DIAL has awarded 10

years contract to the Management of CAPL for providing Ground Handling Services at the IGI Airpor, New Delhi. Hence, the involvement of DIAL as party to the proceedings will not serve any purpose as DIAL is neither a necessary party nor a proper party for determination of the dispute as to whether there is any justification or not by the Management of CAPL for not paying VDA at the enhanced rate to their workmen as per the notifications referred in the reference orders.

The application therefore, is misconceived and a dilatory tactic adopted by the union to delay early settlement of the dispute. Similarly, as admitted by the complainant union that DIAL has signed a Concession Agreement with M/s. CAPL for providing Ground Handling Services at IGI Airport and filing of that agreement has nothing to do with the justification for non-payment of VDA at the enhanced rate on the strength of notifications as mentioning in the reference order. The application may, therefore, be dismissed”.

6. Vide its order dated June 17, 2013, the Tribunal concluded as under:

“As pointed out above, there is implied power vesting in the Tribunal to implead parties. However, the Tribunal cannot exercise that power to enlarge material scope of reference, since its jurisdiction to deal with industrial dispute is derived solely from the order of reference

passed by the appropriate Government under Section 10(1) of the Act. As projected by the claimant union, OMDA signed between the Airport Authority of India and Delhi International Airport Ltd. After signing of OMDA, the management has to seek permission for carrying out business of ground handling from M/s. DIAL. Thus, it is apparent that M/s. DIAL is not only necessary party but a proper party Obviously for exercise of power to implead the M/s. DIAL as a party to the dispute, the Tribunal has to confine itself, during the process of adjudication, to the question referred by the appropriate Government through the reference order only. Thus, it is evident that the M/s. DIAL is to be impleaded in the arrays of the respondents, in order to represent employer. I do not find any substance in the contention of Shri Pankaj Kumar that this Tribunal cannot order for impleadment of M/s. DIAL as a party.

Adding M/s. DIAL to the arrays of respondents would not add to the woes of the management. Therefore, application under reference is granted. Let memo of parties be filed and thereafter notice be issued to M/s. DIAL to join the proceedings. Let notice be issued to M/s. DIAL called upon them to file their written statement on 31.07.2013”.

7. The petitioner filed an application under Order 1 Rule 10 CPC seeking deletion of its name as necessary party, wherein the following averments were made:

“2. That the application under Order 1 Rule 10 of CPC is being filed on behalf of Management No. 2 to delete its name from the array of parties. It is submitted that the Management No. 2 is not the employer of the workman neither the workman was appointed by the Management No. 2 whereas it is an admitted fact that the Workman was appointed by the Management No. 1. It is further stated that there is no contract between Management No. 1 and Management No. 2 in terms of hiring any employee of the Management No. 1.

3. It is submitted that the workman never got paid from the Management No. 2 whereas workman has always been paid his salary and all applicable statutory benefits such as Provident Fund, etc. from Management No. 1.

4. It is further submitted that Management No. 2 has wrongly been impleaded in the statement of claim filed by the workman and mentioned as a principal employer due to OMDA, an agreement between Management No. 2 and Airport Authority of India vide dated 04.04.2006. It is pertinent to mention here that neither Management No. 1 nor Workman is the party to this agreement. It is further pertinent to mention here that the workman was appointed by the Management No. 1 and there was no privity of contract between the Workman and Management No. 2.

5. It is further submitted that the Workman does not

come under the provisions of Section 2(s) of the Industrial Disputes Act, 1947, as there is no Employer-Employee legal relationship between the workman and Management No. 2.

6. *It is further pertinent to mention here that the Workman is the employee of Management No. 1 and the entire allegation stated in statement of claim are also referred against Management No. 1. Therefore, it is humbly submitted that Management No. 2 should be deleted from the statement of claim.*

7. *It is submitted that the name of Management No. 2 has not been referred by the Central Government as the Management No. 2 was not a party during the conciliation Proceedings. This Hon'ble Court has no jurisdiction to entertain the impleadment application filed by the Workman, which has neither been served upon Management No. 2, till date nor any notice was also issued to Management No. 2".*

8. A reply was filed to this application by the respondent No. 1 wherein the following stand has been taken by it:

"That under the provisions of the Industrial Dispute Act, 1947, Industrial Tribunal and Labour Court have no power of review/deleting the order passed by the Court. There is no powers with the industrial or labour court analogues to those expressly vested in the civil courts under CPC. CPC is not applicable in the matter of

industrial dispute except for certain purpose. In fact, the management has moved the present application only to prolong the proceedings and to mislead the court and to save itself from the liabilities to be accrued on passing of the award, if any, in favour of the workmen by this Hon'ble Tribunal. Therefore, the application for the management is not maintainable and liable to be rejected outrightly.

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That the contents of Para 3, 4, 5, 6 & 7 are not correct. The contents mentioned by management No. 2 DIAL is nothing but twisted version of fragment of their imagination and are at variance to related facts. It is specifically submitted that "Operator". It is also specifically brought to your kind notice that as per the Authority of India (AAI) & DIAL, it is the function of the Airport Operator (DIAL) to maintain and reform services cum activities constitution Aeronautical & Non-solely ancillary service at IGI Airport New Delhi for providing air transport services. Accordingly DIAL being airport operator is having a absolute authority, Responsibility and accountability for providing, maintaining of ground handling and ancillary services at IGI Airport New Delhi. That further in accordance with the terms and agreement of OMDA, DIAL/JVC is authorized to contract to contract/outsourced sub contract with third parties to

undertake functions on behalf of the DIAL/JVC, in the Demised Premises. Accordingly DIAL has given its responsibility of providing ground handling and ancillary services at IGI airport to M/s. Cambata Aviation under DIAL's Authority, control cum accountability and supervision. Thus, signed a contract and named it as concession agreement with M/s. Cambata Aviation Pvt. Ltd. That as per the terms of contract it is DIAL who fixed the rate to be charged to airlines/aircrafts and DIAL has complete control/authority, responsibility and accountability for ground handling and ancillary services over management of M/s CAPL. Therefore, the relationship between M/s Cambata Aviation Pvt. Ltd and the DIAL is one of 'Contractor' and Principal Employer within the meaning of Contract Labour (regulation and Abolition) Act, 1970."

9. Even though the service report was awaited, the parties as above, appeared today. Mr. Dinesh Agnani, learned Senior Counsel for the petitioner would reiterate the submissions as made by the petitioner in its application seeking deletion. He would state that the reasons given by the Tribunal for impleading the petitioner are totally unjustified. According to him, the petitioner is neither a necessary nor a proper party. Further, the reference, so made has no connection with the inter se relationship between the petitioner and the respondent No. 2.

10. On the other hand, Mr. N.A. Sebastian, learned counsel appearing for the respondent No. 1 along with Mr. Rahul Batra, Secretary of the

respondent No. 1 would submit that the petitioner is a proper party and in support of this submission, he states that since the claim of the respondent No. 1 before the Tribunal is for a substantial amount, the presence of the petitioner is required. He would further state that the agreements entered by the petitioner with the respondent No. 2 and so also with the Airports Authority of India, would be relevant to highlight the inter se relationship. He would further state that a mistake had occurred by the respondent No. 1 in not impleading the petitioner during the conciliation proceedings. That mistake continued even at the time of the filing of the claim before the Tribunal. According to him, in all other disputes raised by the respondent No. 1, the petitioner has been made a party. In the last, he would state that the respondent No. 1 would not claim any relief against the petitioner before the Tribunal.

11. Mr. Ashok K. Srivastava, learned counsel appearing for the respondent No. 2 would reiterate the submissions made by it in the reply filed by the respondent No. 2 to the application for impleadment before the Industrial Tribunal. He would also state that in none of the proceedings against the respondent No. 2, the petitioner is a party.

12. I have heard the learned counsel for the parties. The dispute which has been referred by the appropriate government is primarily, one relating to the grant of Variable Dearness Allowance/DA to the workmen represented by the respondent No. 1 with effect from February 01, 2010 despite the notifications of the Government of NCT. Even in the claim petition, the petitioner has sought the Variable Dearness Allowance/DA from that particular date with interest @ 18 % p.a. It is not disputed that the workmen, as represented by the respondent No. 1,

have been appointed by the respondent No. 2. There is no reference to the petitioner in the reference or in the claim petition filed by the respondent No. 1. On a specific query to Mr.N.A.Sebastian, learned counsel appearing for the respondent No. 1 as to how the agreements which have been entered, by the petitioner and the respondent No. 2 and the petitioner with the Airports Authority of India, would be relevant for grant of Variable Dearness Allowance/DA, no answer was forthcoming. In the absence of any relief against the petitioner, the petitioner is not a necessary party. It is not the case of the respondent No. 1 before the Tribunal, that the petitioner herein and the respondent No. 2 are jointly and severally liable for the allowance. For a proper party, there has to be averments in the clam, which would prima facie show in the absence of the petitioner being a party, the relief of Variable Dearness Allowance would not be granted. No such averments have been made except “*that the petitioner has signed an OMDA agreement with the Airport Authority of India and the fact that the respondent No. 2 carry its business on ground handling services, has signed a contract with the petitioner, and the petitioner is a principal employer, having administrative, financial and supervisory control over the respondent No. 2*”. The finding of the Tribunal is based on these averments. Surely, such a conclusion would not make the petitioner a necessary/proper party so as to be impleaded. The position of law insofar as the impleadment is well recognized. The Supreme Court in the case reported as (2010) 7 SCC 417, Mumbai International Airport (P)Ltd. Vs. Regency Convention Centre & Hotels (P) Ltd. in paras 13, 14 and 15 held as under:

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

“10. (2) Court may strike out or add parties-- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added”.

14. *The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.*

15. *A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a ‘necessary party’ is not impleaded, the suit itself is liable to be dismissed. A ‘proper party’ is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper*

or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance”.

13. That apart, in para 29 of the Judgment of *Mumbai International Airport (P) Ltd. (supra)*, the Supreme Court has held as under:

“29. Learned counsel for the appellant contended that Mumbai airport being one of the premier airports in India with a very high and ever increasing passenger traffic, needs to modernise and develop every inch of the airport land; that the suit land was a part of the airport land and that for the pendency of first respondent's suit within an interim order, AAI would have included the suit land also in the lease in its favour. It was submitted that therefore a note was made in the lease that the land measuring 31000 sq.m. was not being made a part of the lease but may become part of the demised premises subject to the court verdict. This does not in any way help the appellant to claim a right to be impleaded. If the interim order in the suit filed by the first respondent came in the way of granting the lease of the suit land, it is clear that the suit land was not leased to appellant. The fact that if AAI succeeded in the suit,

the suit land may also be leased to the appellant is not sufficient to hold that the appellant has any right, interest or a semblance of right or interest in the suit property. When appellant is neither claiming any right or remedy against the first respondent and when first respondent is not claiming any right or remedy against the appellant, in a suit for specific performance by the first respondent against AAI, the appellant cannot be a party. The allegation that the land is crucial for a premier airport or in public interest, are not relevant to the issue”.

14. In this case as well, mere apprehension that the award, if in favour, cannot be implemented by the respondent No. 2, would be no ground seeking impleadment of the petitioner. The Tribunal has overlooked the sound judicial principles in allowing the application for impleadment. The order dated June 17, 2013 is liable to be set aside. I do so accordingly. As I have set aside order dated June 17, 2013, the order dated December 20, 2013 also need to be set aside.

15. The writ petition is allowed.

16. No costs.

CM No. 2255/2014

This is an application filed by the respondents for payment of litigation expenses. The petitioner is directed to pay the litigation expenses of ₹ 15,000/- to the respondents within a period of two weeks from today.

Application stands disposed of.

CM No. 2057/2014

In view of the order in the writ petition, the application is disposed of as infructuous. The parties to file application before the Tribunal for the revival of the proceedings.

(V.KAMESWAR RAO)
JUDGE

FEBRUARY 20, 2014
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